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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.R., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CARLOS R.,

Defendant and Appellant.

D053757

(Super. Ct. No. SJ12017)

APPEAL from an order of the Superior Court of San Diego County, George W.  
Clarke, Judge. Affirmed.

Carlos R. appeals an order denying him reunification services regarding the  
dependency of his daughter, L.R. He contends the order denying services is not  
supported by substantial evidence under either Welfare and Institutions Code section

361.5, subdivision (e)(1) or section 361.5, subdivision (b)(12),<sup>1</sup> and the court erred by removing custody from him under section 361, subdivision (c)(1). We affirm the order.

### FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2008, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of 11-year-old L.R., alleging L.R.'s mother, G.G., had subjected her to abuse by hitting her with her hand, a belt and a broom; G.G. used dangerous drugs and so was unable to provide regular care for L.R.; and Carlos's whereabouts were unknown. G.G. was arrested for child cruelty and possession of a controlled substance. L.R. was detained with relatives.

L.R. said that Carlos had been incarcerated since she was three years old, and she had periodic telephone contact with him. Carlos said he was in prison for armed robbery and was scheduled to be released in June 2011. His criminal history included battery, drug possession, domestic violence and rioting. The social worker said Carlos had been incarcerated for most of L.R.'s life and recommended he not receive reunification services.

At the jurisdictional and dispositional hearing, the court declared L.R. a dependent child of the court, removed her from parental custody and placed her in relative care. The court provided services for G.G., but denied them for Carlos.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise specified.

## DISCUSSION

### I

Carlos contends there was not substantial evidence to support the court's order denying services to him under section 361.5, subdivision (e)(1). He argues, other than the length of his incarceration, the court did not consider the factors required by section 361.5, subdivision (e)(1) when deciding not to offer him services and did not expressly make the finding that providing services to him would be detrimental to L.R. He argues the court also erred by denying services under section 361.5, subdivision (b)(12), and the Agency did not show that offering services to him would be detrimental to L.R.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Section 361.5, subdivision (e)(1) provides if a parent is incarcerated, the court shall order reunification services unless it determines by clear and convincing evidence that such services would be detrimental to the child. The court must consider the following in determining detriment:

"the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime . . . , the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, . . . and any other appropriate factors." (§ 361.5, subd. (e)(1).)

Reunification services are subject to the applicable time limits set out in section 361.5, subdivision (a). (§ 361.5, subd. (e)(1).)

Substantial evidence supports the court's denial of reunification services under section 361.5, subdivision (e)(1). The court based the finding that placement with Carlos would be detrimental to L.R. on the Agency's reports, which was the only evidence presented. In the reports, the social worker noted that Carlos's incarceration would be longer than the statutory reunification period, and thus providing services to him would delay permanency for L.R. if G.G. were not able to reunify with her. The Agency's reports also showed Carlos and L.R. did not share a parent-child bond. Eleven-year-old L.R. told the social worker Carlos had been in prison since she was about three years old and, although she sometimes talked with him by telephone, she did not know when she had last spoken with him. She said she did not know where he was incarcerated or why. The social worker opined their only bond was based on short telephone calls and letters.

The report also noted the nature of the crimes for which Carlos was incarcerated. He was in prison for the violent crimes of assault and battery, disturbing the peace, robbery and domestic violence. As to the degree of detriment to L.R. if the court did not offer services to Carlos, L.R. and Carlos barely knew each other. He had been in prison since she was three years old, and they had contact only through infrequent short

telephone calls and letters. The Agency's reports presented substantial evidence of the factors detailed in section 361.5, subdivision (e)(1) to support denying services to Carlos.

As for the denial of services under section 361.5, subdivision (b)(12), that subdivision provides reunification services need not be provided when the court finds by clear and convincing evidence that the parent has been convicted of a violent felony as defined by Penal Code section 667.5. Services are not to be provided under this subdivision unless the court finds by clear and convincing evidence that reunification is in the child's best interest. (§ 361.5, subd. (c).)

Carlos concedes that section 361.5, subdivision (b)(12) applies to him because he was convicted of a violent felony, but he argues reunification with him was in L.R.'s best interest. The court did not err by not making a finding that reunification with Carlos would be in L.R.'s best interest. Carlos would not be able to participate in services during the reunification period because of his incarceration, and he could not provide care for her until after his release in 2011. He had no parent-child relationship with L.R. because he had been in custody for much of her life. Carlos has not shown error.

## II

Carlos asserts the court erred by ordering L.R.'s removal from his custody under section 361, subdivision (c)(1). He argues because the petition contained no allegations with respect to him, the court should have proceeded according to the provisions of section 361.2, subdivision (a), which requires the court to place a child with the nonoffending parent who requests custody unless it finds placement with that parent would be detrimental to the child.

Section 361, subdivision (c)(1) provides a child may not be taken from the custody of his or her parents unless the juvenile court finds by clear and convincing evidence:

"There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

The focus of the removal statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) The court has broad discretion to determine a child's best interests. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

The court's decision to remove L.R. from Carlos's custody is well supported. As stated above, he had been in custody for much of L.R.'s life and did not have a parent-child relationship with her. He had an extensive criminal history, was incarcerated for violent crimes and would not be released until after the reunification period had ended. Substantial evidence supports L.R.'s removal from parental custody under section 361, subdivision (c)(1).

#### DISPOSITION

The order is affirmed.

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HUFFMAN, Acting P. J.

WE CONCUR:

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HALLER, J.

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IRION, J.